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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,506	03/31/2004	Toshiaki Iizuka	1232-5364	1302
27123	7590	02/26/2008		
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101				
EXAMINER				
PUENTE, EMERSON C				
ART UNIT		PAPER NUMBER		
2113				
NOTIFICATION DATE		DELIVERY MODE		
02/26/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/815,506

Applicant(s)

IIZUKA, TOSHIKI

Examiner

Emerson C. Puente

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 13-25 is/are rejected.
- 7) ☒ Claim(s) 6-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date 12/28/07, 2/7/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-25 have been examined.

This action is made **Non-Final**.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 15,17,18, and 21 of Patent 7,086,034 referred hereinafter “Patent '034” contains every element of claims 1,13,14,15,16, and 21-25 of the instant application and as such anticipate claims 1,13,14,15,16, and 21-25 of the instant application. Claims 1,13,14,15,16, and 21-25 of the instant application therefore are not patentably distinct from the earlier application claims and as such are unpatentable over obvious-type double patenting. A later application claim is not patentably distinct from an earlier claim if the later claim is anticipated by the earlier claim. “A later patent claim is not patentably distinct from an earlier patent claim if the later claim is

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obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). “ ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Claims 1-10 of Patent 7,188,279 referred hereinafter “Patent '279” contains every element of claims 1-5 and 13-25 of the instant application and as such anticipate claims 1-5 and 13-25 of the instant application. Claims 1-5 and 13-25 of the instant application therefore are not patently distinct from the earlier application claims and as such are unpatentable over obvious-type double patenting. A later application claim is not patentably distinct from an earlier claim if the later claim is anticipated by the earlier claim. “A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). “ ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 24 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A control program, without a storage medium, to realize the control program's functionality, constitutes non-statutory subject matter. See MPEP 2106.

Allowable Subject Matter

Claims 6-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-5, 13-23, and 25 would be allowable if a terminal disclaimer is submitted to overcome the double patenting rejection(s) set forth in this Office action.

The primary reason for allowance for claims 1 is the inclusion of a step of rewriting addresses of the loaded functions that execute the predetermined processes, and an address of the designated function in the operating system to an address of a function for log acquisition in conjunction with the rest of the limitation set forth in the claim.

The primary reason for allowance for claim 13 is the inclusion of a step of rewriting an address of the loaded function that executes the predetermined process to an address of a function for log acquisition in conjunction with the rest of the limitation set forth in the claim.

The primary reason for allowance for claim 14 is the inclusion of a step of rewriting an address of the designated second function loaded when that second function is called by the first function to an address of a function for log acquisition in conjunction with the rest of the limitation set forth in the claim.

The primary reason for allowance for claim 15 is the inclusion of a step of rewriting an address of the second function which is set with the ID and is loaded when that second function is called by the first function to an address of a function for log acquisition in conjunction with the rest of the limitation set forth in the claim.

The primary reason for allowance for claim 16 is the inclusion of a step of rewriting addresses of the loaded methods that execute the predetermined processes, and an address of the designated method in the operating system to an address of a method for log acquisition in conjunction with the rest of the limitation set forth in the claim.

The primary reason for allowance for claim 21 is the inclusion of a step of rewriting an address of the loaded method that executes the predetermined process to an address of a method for log acquisition in conjunction with the rest of the limitation set forth in the claim.

The primary reason for allowance for claim 22 is the inclusion of a step of rewriting an address of the designated second method loaded when that second method is called by the first method to an address of a method for log acquisition in conjunction with the rest of the limitation set forth in the claim.

The primary reason for allowance for claim 23 is the inclusion of a step of rewriting an address of the second method which is set with the ID and is loaded when that second method is

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called by the first method to an address of a method for log acquisition in conjunction with the rest of the limitation set forth in the claim.

The remaining claims, not specifically mentioned, are allowed because they are dependent upon one of the claim mentioned above.

US Patent No 5,970,245 discloses a trace dll which serves as an interface to the target dll for performing debug operations (see figure 3, column 3 lines 24-45 and figure 7, column 4 lines 20-50), indicating a log acquisition method for acquiring a log during execution of a program, comprising calling the functions that execute the predetermined process and the designated function in the operating system, making the functions execute the predetermined processes and passing a received execution result of the program, and recording predetermined information, but fails to disclose other specifics of the claim.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emerson C. Puente whose telephone number is 571-272-3652. The examiner can normally be reached on 9-6 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Emerson C Puente/
Primary Examiner, Art Unit 2113